

## **INITIAL STATEMENT OF REASONS**

Existing departmental regulations establish that each facility shall provide legal materials through its law library to provide inmates with meaningful access to the courts, and that inmates with established court deadlines shall be given a higher priority to access law library resources. These existing regulations offer inadequate guidance to the law libraries about the extent to which inmates are provided with law library access to satisfy their constitutional right to meaningfully access the courts. As a result, the California Department of Corrections and Rehabilitation (CDCR) has continually been the subject of litigation by inmates about allegedly insufficient law library access.

This action would provide much needed clarification about inmate access to the law libraries and the requirements for “Priority Legal User” status. These clarifications would ensure consistent implementation of law library access for inmates throughout CDCR. Language is also added that establishes statewide measures to ensure inmate access to the law library during lockdowns, suspensions, and other instances of restricted inmate movement.

Moreover, this action would encode into regulations a federal court order from *Gilmore v. Lynch*, listing the specific materials that CDCR law libraries must maintain. *Gilmore v. Lynch* (N.D.Cal. Oct. 16, 1972), Order Directing Adoption of Regulations to Implement Previous Order Granting Relief. This action would ensure that CDCR remains compliant with that order. Also, *Gilmore* mandated law library materials are increasingly made available to inmates by computer on the Law Library Electronic Delivery System (LLEDs), and this action would require that inmates have access to LLEDs to conduct legal research. The action would also provide clarification about the issuance of computer passwords and external communication capabilities for computers.

Lastly, this action would amend existing regulations for legal forms and duplicating services. The existing regulations offer inadequate guidance to the law libraries about the extent that law libraries must duplicate legal documents for inmates that are intended for a court. This action would provide much needed clarification that legal documents to be duplicated shall not exceed 50 pages in total length, including exhibits, except when necessary to advance litigation. It would also set out lawful standards on legal duplication services for indigent inmates. This action is necessary to ensure consistency in CDCR and to manage costs and resources to the state associated with legal duplication services.

### ***Subchapter 1, Article 3, “Work and Education”***

#### **Section 3041.3 Inmate Access to Computers.**

**Subsection 3041.3(a) is amended** to ensure that inmates who might be restricted from computer usage may still have meaningful access the courts through the Law Library Electronic Delivery System, which is computer based. In some instances, access to the

courts through the print law library is limited due to the location of the print collection and the inability of inmates to be transferred to another yard due to safety and security concerns. For instance, it may not be feasible for an inmate in a sensitive needs yard to be taken into a general population yard where the print collection is housed, in order to ensure the safety of the sensitive needs inmate. In this circumstance, the sensitive needs inmate would be granted access to the courts through the use of a LLEDS inside the sensitive needs yard.

**Subsections 3041.3(b) and (c) remain unchanged.**

**Subsection 3041.3(d) is amended** to delineate that inmates do not have access to unauthorized computers that are in operation in a facility. All computers must be clearly labeled to indicate whether or not an inmate is authorized to use it.

**Subsection 3041.3(e) is amended** to emphasize that under no circumstance shall an inmate be able to access any computer that contains sensitive information, either directly or indirectly when a computer is linked to another computer that does contain sensitive information.

**Subsection 3041.3(f) is amended** to clarify that inmates shall not use or be informed of any computer password, except when issued by the supervising prison staff. The supervising staff, but not the inmate, retains the ability to change the password.

**Subsection 3041.3(g) through (i) remain unchanged.**

**Subsection 3041.3(j) is amended** to add the provision that the ISO is the appropriate departmental person to determine if an inmate convicted of a computer crime can be allowed to access a computer, as well as to clarify that such an inmate can do legal research on the Law Library Electronic Delivery System. The addition of this provision is consistent with language contained in subsections 3041.3(a) and (b).

**Subsection 3041.3(k) is amended** to clarify what external communications capabilities are not permitted in areas where inmate have access to computers. This subsection would also clarify that any exception to the external communications rule must be in writing by the ISO, and that the local Information Security Coordinator must keep a copy of that exception.

**Subsections 3041.3(l) through (n) remain unchanged.**

## **Subchapter 2, Article 3, Library**

### **Section 3122. Inmate Law Library.**

**Subsection 3122(a) is amended** to remove information pertaining to inmates with established court deadlines, as that information is included and expanded upon in new subsections to be adopted in this section.

**Subsection 3122(b) is adopted** to establish that inmates who utilize a law library will be classified as either a Priority Legal User (PLU) or a General Legal User (GLU). Inmates with established court deadlines may apply for PLU status, which would give them higher priority access to law library resources than GLU inmates. The subsection sets the criteria that shall be used to determine PLU or GLU status.

**Subsection 3122(b)(1) is adopted** to describe what constitutes an established court deadline. It also establishes what the inmate must submit as proof of the court deadline in order to receive PLU status.

**Subsection 3122(b)(2) is adopted** to express that inmates who have attorney representation for a case shall not be entitled to PLU status for an established court deadline pertaining to that case. Inmates who are represented by an attorney have their constitutional right to meaningful access to the court fulfilled by their attorney. An inmate who is represented by an attorney does not need preferential treatment for access to the law library since the attorney acting on the inmate's behalf assumes responsibility for meeting court deadlines, researching issues related to the case, and filing any needed petitions or requests.

**Subsections 3122(b)(3) through 3122(b)(3)(D) are adopted** to identify the four specific legal actions that enable the inmate to receive PLU status if there is an actual established court deadline for those actions. In *Lewis v. Casey* (1996) 518 U.S. 343, 355, the Supreme Court articulated that inmates are to be provided with legal resources to attack their criminal sentences and to challenge their conditions of confinement. The four legal actions that would be enumerated in these subsections: (A) A petition for writ of habeas corpus; (B) An appeal of a criminal conviction; (C) A state or federal action concerning criminal conviction; and (D) A petition for certiorari concerning criminal conviction, are tailored to this standard. For any other legal purposes, inmates may use law library resources on GLU status.

**Subsection 3122(b)(4) is adopted** to establish the process for an inmate to seek PLU status. The inmate must complete a CDCR Form 2171 (rev. 2008) to apply for PLU status. This Form would establish that the inmate has an established court deadline per subsection 3122(b)(3), but does not have attorney representation for that deadline.

**Subsection 3122(b)(5) is adopted** to establish the timeline that an institution has to process an inmate's Form 2171 application for PLU status. This regulation sets out that law library staff must process the application for PLU status within one week, except under extraordinary circumstances such as a prison lockdown or a flood. CDCR has deemed one week to be a sufficient time frame to verify the accuracy of the application. It is incumbent upon law library staff to verify the accuracy of the application, which may involve the staff contacting the court.

**Subsection 3122(b)(6) is adopted** to set forth the consequences should an inmate falsify court documents in order to obtain PLU status. If an inmate has an actual court

case that would indicate PLU status is warranted, the inmate must work with law library staff to ensure that proper documentation is attached to the application. An inmate who has provided false information on a CDCR Form 2171 application for PLU status shall be guilty of an administrative rules violation and shall not be able to obtain PLU status based on that application.

**Subsection 3122(b)(7) is adopted** to establish that an inmate may receive PLU status within 30 calendar days of his or her established court deadline unless the inmate can demonstrate a need for a longer period of PLU status. 30 calendar days has been deemed to be a generally sufficient time period for a PLU inmate to conduct legal research and prepare documents for a court filing. This limitation of PLU duration would help ensure that all inmates can receive adequate access to the law library. If an inmate is unable to complete the needed research work within the 30 days time frame, the inmate may request an extension from law library staff.

**Subsection 3122(b)(8) is adopted** to inform inmates of the behavioral expectations for using a law library, and the consequences for inappropriate behavior. This language establishes the authority of the law library staff to enforce the rules of the law library for the overall benefit of all patrons by ensuring that all inmates are allowed to work in an environment appropriate for study and research. Unreasonably disruptive behavior is sufficient to remove an inmate from PLU status for a period of 30 days. This time frame is deemed to be sufficient for an inmate to recognize that inappropriate law library behavior will not be tolerated without being so punitive that the inmates is denied access to the court.

**Subsection 3122(c) is adopted** to establish the written and legal policy prohibiting inmates from transferring their PLU status to another inmate. This ensures that inmates are using the PLU status only for their own needs and benefits. It also eliminates the possibility of inmates coercing, threatening, bribing, or blackmailing each other over the status of PLU.

**Existing subsection 3122(b) is renumbered to subsection 3122(d) and remains unchanged.**

### **Section 3123. Access to Law Libraries**

**Subsection 3123(a) is adopted** to define “physical law library access” for the purposes of providing inmates with meaningful access to the courts. Physical law library access shall mean physical entry into a facility law library for the purpose of using its legal resources. A facility law library includes, but is not limited to, a print law library or the Law Library Electronic Delivery System with any necessary print supplements.

**Subsection 3123(b) is adopted** to clarify that all CDCR inmates, regardless of their housing assignment or classification, are entitled to physical law library access that is sufficient to provide meaningful access to the courts. In addition, this subsection would express that inmates on PLU status may receive a minimum of 4 hours per calendar

week of requested law library access, as resources are available, and shall be given higher priority to access the law library resources than other inmates. Inmates on GLU status may receive a minimum of 2 hours per calendar week of requested physical law library access, as resources are available. The phrase, “as resources are available” is needed to ensure that institutional operational needs are able to be maintained without interruption should an extraordinary circumstance, such as a prison lockdown, interrupt the availability of access to a law library. The standard of 4 hours per week for PLU status inmates and 2 hours per week for other inmates is derived from *Zatko v. Rowland* (N.D.Cal. 1993) 835 F.Supp. 1174, 1178, which upheld a local prison rule for inmate law library access that was similar in nature.

**Subsections 3123(c)(1) through 3123(c)(3) are adopted** to make provisions for extraordinary circumstances when an inmate is unable to physically access a law library. Examples of an extraordinary circumstance include, but are not limited to, where the inmate is directly under a prison lockdown, the inmate is under restricted movement due to his or her medical status, or the inmate has been suspended from physical access to the law library pending investigation of a serious rule violation. In such a case, the inmate may submit a written request for legal materials by a process known as paging. The paged law library material is subsequently delivered to the inmate’s cell by law library staff within a specified time frame as set forth in subsection 3123(e). Library paging provides access to the requested material through a photocopy of that material. Paging may not be used as a permanent means of granting access. It is designed as a temporary solution to permit access in certain situations.

**Subsection 3123(d) is adopted** to specify the time frame of 16 days within which law library staff must deliver paged material to an inmate in his or her cell during a lockdown. This time frame is derived from *Lewis v. Casey* (1996) 518 U.S. 343, 361-62 where the Supreme Court suggested that it may be lawful for inmates under a lockdown to experience a delay of up to 16 days in receiving legal materials or legal assistance. In many circumstances institutions can begin restoring inmates’ physical access to the law library within 16 days from the beginning of a lockdown. This 16 day period to regain physical access is dependent on the operational needs of the institution in order to ensure the overall safety and security of the institution. The subsection accordingly would allow the paging period to be extended when a high security risk continues to exist to prohibit physical law library access.

**Subsection 3123(e) is adopted** to establish the maximum time frame an inmate may wait for requested documents when using the paging process for any reason. The 16-day time frame has been established as a reasonable amount of time to allow legal law library material to be delivered. A 16-day time frame was accepted in *Lewis v. Casey*, as discussed more fully in this document in subsection 3123(d).

**Subsection 3123(f) is adopted** to advise that an inmate who is found guilty of a serious rule violation pertaining to law library resources, such as ripping up a research book, may lose up to 90 days access to the physical law library. An inmate who is suspended from physical law library access would not be able to use the print law

library or the Law Library Electronic Delivery System. However, that inmate nevertheless may still have the ability to continue law library research through the use of paging.

### **Section 3124. Content of Law Libraries**

**Subsections 3124(a) through 3124(a)(20) are adopted** to establish that each institution shall maintain a law library that is either a print law library or a Law Library Electronic Delivery System, with any necessary print supplements. The legal publications contained in both the print and the electronic libraries shall be the same, and have been mandated to be included in law libraries from a 1972 federal district court order in *Gilmore v. Lynch*. See *Gilmore v. Lynch* (N.D.Cal. Oct. 16, 1972) No. 45828, Order Directing Adoption of Regulations to Implement Previous Order Granting Relief, at 2-3. The *Gilmore* order lists the legal materials that must be included in the law libraries of all adult prisons. These subsections would codify the *Gilmore* mandated list of law library materials into the California Code of Regulations.

**Subsections 3124(b) through 3124(b)(8) are adopted** to establish and define the specific supplemental legal materials that also must be made available for inmate use, also per the *Gilmore v. Lynch* court. See *Gilmore* Order at 4 [listing the contents of a court ordered “circulating law library” for use by inmates as supplemental legal research materials]. The supplemental materials may be available from an outside source, such as a public law library in the community that maintains a contract with the Department. These subsections would codify the *Gilmore* mandated list of circulating law library materials into the California Code of Regulations.

### ***Subchapter 2, Article 6 Legal Documents***

#### **3162. Legal Forms and Duplicating Services**

**Subsection 3162(a) is moved to subsection 3162(b). New subsection 3162(a) is adopted** to define what constitutes an indigent inmate for purposes of this section. This information is necessary in this subsection because subsection 3162(b) contains new language that addresses legal duplication services that are provided to indigent inmates. This definition most closely identifies those inmates who are truly without funds, keeping in mind that most inmate job assignments provide modest compensation. The 30 day wait period is important as many inmates receive funds from family members and correspondents.

**Subsection 3162(b) is moved to new subsection 3162(e). Subsection 3162(b) is amended** with changes in language that more clearly define the requirements that indigent inmates must meet in order to receive duplication services that the Department is obligated to provide. Changes have been made to existing language for clarity and to make this subsection easier to read and comprehend. The subsection would also specify that an inmate must pay for any duplication services, and for any special paper

and envelopes for a mailing to the courts, so long as the inmate has more than \$1.00 in his or her trust account or the inmate has attorney representation for the court action.

**Subsection 3162(c) is adopted** to establish a 50-page limit for legal documents that a law library is obligated to duplicate for inmates without special consideration. The Department set this limit upon determining that necessary legal documents for inmate filings to a court generally do not exceed 50 pages in length. This limitation also assists the Department in maintaining a controllable workload, and helps to prevent abuse and waste of Department resources and copying equipment that may be consumed or worn out by unnecessary photocopying. However, language has also been included to acknowledge that there may be times when additional copy services are required, and the means by which an inmate may request such services.

**Subsection 3162(d) is adopted** to list the documents that the Department is required to copy for an indigent inmate, subject to the limitations of subsection 3162(c). This list was developed by the Department in collaboration with the Office of the Attorney General's office to identify essential documents required by a court for inmate litigation. Should an indigent inmate have attorney representation, however, this service can be provided by the attorney. Subsection 3162(d)(10) allows that there may be other documents necessary to advance litigation that should be copied.

**Subsection 3162(e) is adopted** to establish the minimum level of authority of CDCR personnel who are authorized to place restrictions on inmates in regards to the law library. In addition this subsection sites the specific form to be used when documenting the actions that lead to an inmate's law library restriction. Language was deleted to provide clarity and to make existing language easier to understand.

#### **3164. Administrative Segregation.**

**Subsection 3164(a) through 3164(c) remain unchanged.**

**Subsection 3164(d) is adopted** to provide that inmates residing in restricted housing can have access to the law library, subject to the provisions of section 3123. Law library access for inmates in restricted housing is accomplished through the Law Library Electronic Delivery System, if it is available in their assigned housing unit. This language expands the resources available to inmates assigned to restricted housing. If an electronic law library is not available, the inmate may continue to use paging to obtain needed law library resources.